

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0824-05
Bill No.: Truly Agreed To and Finally Passed SCS for HCS for HB 214
Subject: Crimes and Punishment; Victims of Crime
Type: Original
Date: May 26, 2011

Bill Summary: This proposal revises laws regarding human trafficking.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator** assume the proposal would not fiscally impact the courts.

Officials from the **Department of Mental Health (DMH)** stated the bill does specifically address the provision of mental health and substance abuse services for individual victims of sexual offenses. It does say that agencies may provide services if funding exists. It is therefore assumed that the proposal places no requirements on the Department of Mental Health that would create a fiscal impact beyond its current level of operation.

Officials from the **Office of the Attorney General (AGO)** state the proposal creates new civil remedies whereby the AGO would bring a cause of action on behalf of victims of human trafficking. AGO assumes that any potential costs from the proposal could be absorbed with existing resources. If multiple cases arise from the passage of this proposal, the AGO may seek additional staff to handle the increase in workload.

Officials from the **Department of Health and Senior Services**, the **Department of Public Safety - Highway Patrol** and the **Office of Prosecution Services** each assume the proposal would not fiscally impact their respective agencies.

For the purpose of this proposed legislation, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any indigent clients faced with the enhanced definition and enhanced penalties for human trafficking.

Passage of bills increasing penalties on existing crimes, or creating new crimes, requires the State Public Defender System to further extend resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

ASSUMPTION (continued)

Officials from the **Department of Social Services - Family Support Division (FSD)** state they contract with agencies across the state to provide services to eligible refugees, which includes confirmed victims of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, P.L. 106-386. These confirmed victims of trafficking are non-U.S. Citizens. Contracting agencies must provide a comprehensive program that includes assessment services, English language instruction and employment services. The comprehensive program may also include case management, day care, health-related services, home management services, information and referral services, intervention and outreach services, translation and interpreter services and transportation services. Additional services may also be provided by contracting agencies.

For victims of trafficking who do not meet the definition of a confirmed victim of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, P.L. 106-386, which includes both U.S. Citizens and noncitizens who are victims of trafficking, the FSD provides requested assistance for all of its programs in the same manner as provided for all applicants and participants. All program eligibility requirements must be met in order to receive assistance. Services do not currently include case management, emergency temporary housing, alcohol and drug addiction screening and treatment, etc. The FSD does make referrals to other agencies for individuals who need services such as housing, alcohol and drug treatment, mental health services, etc when requested or when determined appropriate, including referrals to domestic and sexual violence shelters/programs. As written, this bill would not require the FSD to provide these services, but allows the agency to implement programs or enter into contracts to provide these services as funds allow. If the FSD were required to provide these services, additional staff may be needed to provide the case management services necessary to ensure U.S. Citizens who are victims of trafficking receive necessary and appropriate services and/or referrals. Therefore, FSD assumes no fiscal impact to their agency.

Officials from the **Department of Corrections (DOC)** stated this bill proposes to revise laws regarding human trafficking. The penalty provision component of this bill resulting in potential fiscal impact for DOC, is for up to a class A felony.

This bill expands the crimes of human trafficking by adding new crime criteria. DOC had one case last year charged under existing statute with a sentence of 20 years. Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY10 average of \$16.397 per offender, per day, or an annual cost of \$5,985 per inmate) or through supervision provided by the Board of Probation and Parole (FY10 average of \$3.92 per offender, per day or an annual cost of \$1,431 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seventeen (17) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of the expansions of these crimes, it is assumed the impact would be less than \$100,000 per year for the DOC.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE			
<u>Costs - Department of Corrections</u>			
Incarceration / Probation for offenders of revised law regarding human trafficking	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)	(Less than <u>\$100,000</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to human trafficking. The act adds definitions for "blackmail", "coercion", "financial harm", "nudity", "sexual conduct", "sexual performance" and "victim of trafficking."

This act adds the elements of blackmail to the crime of abusing an individual through forced labor.

Blackmail, causing or threatening to cause financial harm as well as using force, abduction, coercion and deception were also added as elements to the crimes of trafficking for the purposes of slavery, trafficking for the purposes of sexual exploitation, sexual trafficking of a child, and sexual trafficking of a child under the age of twelve. This act also adds the elements of sexual performance and production of explicit sexual material to the crimes of trafficking for the purposes of sexual exploitation, sexual trafficking of a child and sexual trafficking of a child under the age of twelve.

This act increases the penalties and adds a monetary fine not to exceed \$250,000 for all of the human trafficking crimes except sexual trafficking of a child under the age of 12.

This act enhances the penalty for the crimes of abuse through forced labor and trafficking for purposes of slavery if death results, if the human trafficking act includes kidnapping, an attempt to kidnap, sexual abuse when punishable as a class B felony, or an attempt to kill.

This act also enhances the penalty for the crimes of trafficking for the purposes of sexual exploitation and sexual trafficking of a child if the crimes were effected by force, abduction, or coercion.

A court sentencing a defendant under the human trafficking provisions shall order the defendant to pay restitution to the victim in the amount the court finds necessary to compensate the victim for the value of the victim's labor and for the mental and physical rehabilitation of the victim and any child of the victim.

It shall be an affirmative defense under any prosecution for prostitution that the defendant engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or threatened use of, unlawful physical force upon himself or herself or a third person, which force or threatened force a person of reasonable firmness in his or her situation would have been unable to resist.

FISCAL DESCRIPTION (continued)

This act also authorizes the Department of Public Safety to establish procedures for identifying victims of trafficking. The department may establish training programs as well as standard protocols for appropriate agencies to educate officials and employees on state statutes and federal laws regulating human trafficking and with the identification and assistance of victims of human trafficking. Such agencies may include but not be limited to state employees and contractors, including the Children's Division of the Department of Social Services, juvenile courts, state law enforcement agencies, health care professionals, and runaway and homeless youth shelter administrators.

Law enforcement officers shall notify the Department of Social Services and, where applicable, juvenile justice authorities, of persons who reasonably appear to be a victim of trafficking in order that such agencies may determine whether the person may be eligible for state or federal services, programs, or assistance. The department may coordinate with relevant state, federal, and local agencies to evaluate appropriate services for victims of trafficking.

State agencies may implement programs and enter into contracts with nonprofit agencies, domestic and sexual violence shelters and other nongovernment organizations to provide services to confirmed victims of trafficking, insofar as funds are available for that purpose. The list of possible services is prescribed under the act.

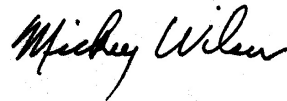
A victim of trafficking may bring a civil action against a person or persons who plead guilty to or are found guilty of a violation of human trafficking to recover the actual damages sustained by the victim, court costs, including reasonable attorney's fees, and punitive damages, when determined to be appropriate by the court. Any such action must be commenced within ten years after the later of (1) the final order in the related criminal case; (2) the victim's emancipation from the defendant; or (3) the victim's eighteenth birthday.

The Attorney General may bring a civil action, in the circuit court in which the victim of trafficking was found, to recover from any person or entity that benefits, financially or by receiving anything of value, from violations of human trafficking, a civil penalty of not more than fifty thousand dollars for each violation of human trafficking, and injunctive and other equitable relief as the court may, in its discretion, order. The first priority of any money or property collected under such an action shall be to pay restitution to the victims of trafficking on whose behalf the civil action was brought.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety
Office of the State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender
Department of Social Services
Office of the Attorney General
Department of Health and Senior Services
Department of Mental Health

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
May 26, 2011